

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANTONIO L. WILLIAMS,
Plaintiff,
v.
N. ALBONICO, et al.,
Defendants.

No. C 07-06419 CW (PR)

ORDER GRANTING MOTION TO
TRANSFER CASE TO EASTERN
DISTRICT OF CALIFORNIA AND
VACATING ORDER GRANTING IN
FORMA PAUPERIS STATUS

Plaintiff Antonio Luis Williams is a prisoner of the State of California who has filed this civil rights complaint. In an Order dated January 11, 2008, Plaintiff was granted leave to proceed in forma pauperis (IFP).

Before the Court are Plaintiff's motion to transfer action to the Eastern District of California (docket no. 4) and his motion entitled "Motion to Refile Complaint Under Imminent Harm Danger Due to Judge Error Abuse Discretion of Dismissal, Interference in a Consolidated Action Involving F.B.I. Investigation an [sic] Tolls Statue [sic] of Limitation" (docket no. 3).

The acts complained of occurred at High Desert State Prison, which is located in the Eastern District of California, and it appears that the Defendants reside in that district. Venue, therefore, properly lies in that district and not in this one. See 28 U.S.C. § 1391(b).

Accordingly, in the interest of justice and pursuant to 28 U.S.C. § 1406(a), Plaintiff's motion to transfer (docket no. 4) is GRANTED and this action is TRANSFERRED to the United States District Court for the Eastern District of California.

1 In an Order dated December 22, 2004, the Court held that
 2 Plaintiff generally is barred from proceeding in forma pauperis
 3 (IFP) in federal court under the provisions of 28 U.S.C.
 4 § 1915(g).¹

5 In view of this, it is clear that leave to proceed IFP was
 6 granted erroneously. It will be revoked; therefore, the Court's
 7 January 11, 2008 Order granting Plaintiff IFP status is VACATED.
 8 See Banos v. O'Guin, 144 F.3d 883, 885 (5th Cir. 1998) (revoking
 9 IFP status on appeal on three-strikes grounds); Patton v. Jefferson
 10 Corr. Center, 136 F.3d 458, 461, 465 (5th Cir. 1998) (district
 11 court correctly revoked IFP upon discovering on remand that
 12 plaintiff had five prior strikes).

13 Plaintiff may proceed IFP only if he is seeking relief from a
 14 danger of serious physical injury which is "imminent" at the time
 15 of filing. See Abdul-Akbar v. McKelvie, 239 F.3d 307, 312 (3d Cir.
 16 2001) (en banc); Medberry v. Butler, 185 F.3d 1189, 1192-93 (11th
 17 Cir. 1999); Ashley v. Dilworth, 147 F.3d 715, 717 (8th Cir. 1998);
 18 Banos v. O'Guin, 144 F.3d 883, 885 (5th Cir. 1998). Because this
 19 action is being transferred to the Eastern District, the Court will
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21 ¹The Prison Litigation Reform Act of 1995 (PLRA), which was
 22 enacted on April 26, 1996, provides that a prisoner may not bring a
 23 civil action or appeal a civil judgment under the IFP provisions of
 28 U.S.C. § 1915:

24 [I]f the prisoner has, on 3 or more prior occasions, while
 25 incarcerated or detained in any facility, brought an action
 26 or appeal in a court of the United States that was
 27 dismissed on the grounds that it is frivolous, malicious,
 unless the prisoner is under imminent danger of serious
 physical injury.

28 28 U.S.C. § 1915(g).

1 not rule on that issue or on Plaintiff's motion entitled "Motion to
2 Refile Complaint Under Imminent Harm Danger Due to Judge Error
3 Abuse Discretion of Dismissal, Interference in a Consolidated
4 Action Involving F.B.I. Investigation an [sic] Tolls Statue [sic]
5 of Limitation" (docket no. 3).

6 CONCLUSION

7 1. Plaintiff's motion to transfer (docket no. 4) is GRANTED
8 and this action is TRANSFERRED to the United States District Court
9 for the Eastern District of California. The Clerk of the Court
10 shall transfer the case forthwith.

11 2. Leave to proceed IFP is REVOKED, and the Court's January
12 11, 2008 Order granting Plaintiff IFP status (docket no. 6) is
13 VACATED.

14 3. This Order terminates Docket no. 4.

15 IT IS SO ORDERED.

16 DATED: 1/17/08



17 CLAUDIA WILKEN
18 United States District Judge
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ANTONIO L. WILLIAMS et al,

Case Number: CV07-06419 CW

Plaintiff,

CERTIFICATE OF SERVICE

v.

N. ALBONICO et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on January 17, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Antonio Luis Williams
#J05660
California Correctional Institution
P.O. Box 1906 4-A-204
Tehachapi, CA 93587

Dated: January 17, 2008

Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk

United States District Court
For the Northern District of California